

Message Text

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ORIGIN EB-08

INFO OCT-01 EUR-12 IO-13 ISO-00 FEA-01 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05
L-03 LAB-04 NSAE-00 NSC-05 PA-01 AID-05 SS-15
STR-04 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 OMB-01
AF-08 ARA-06 EA-07 NEA-10 OIC-02 /133 R

DRAFTED BY EB/ITP/EWT:HLCLARKE:BSAMUEL/EB/ITP/TA:RMEYER:ABA
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EUR/EE - SFROMOWITZ
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EUR/NE - NACHILLES (DRAFT)
L/EB - JCROOK
COMMERCE- JBURGESS
REASURY - DMCINN (DRAFT)
STR - ELAPP

-----260031Z 101044 /45

R 241747Z MAR 77
FM SECSTATE WASHDC
TO AMEMBASSY BUCHAREST
INFO USMISSION EC BRUSSELS
USMISSION GENEVA
AMEMBASSY HELSINKI
AMEMBASSY MOSCOW
AMEMBASSY WARSAW
AMEMBASSY BUDAPEST

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E.O. 11652: N/A

TAGS: EEWT, ETRD, FI, RO, GATT

SUBJECT: FINNISH-ROMANIAN FREE TRADE AGREEMENT AND
ROMANIAN TARIFF
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REF: 1) BUCHAREST 1670 (NOTAL); 2) GENEVA 1822 (NOTAL) J

1. SUMMARY. GATT CANNOT REASONABLY BE EXPECTED TO GIVE A
DEFINITIVE STATEMENT ON FINNISH FREE TRADE AGREEMENTS IN
EASTERN EUROPE. AS ANTICIPATED BUCHAREST 1670, A ROMANIAN-
FINNISH FREE TRADE AGREEMENT COULD AFFECT ROMANIA'S

ELIGIBILITY FOR THE U.S. GENERALIZED SYSTEM OF PREFERENCES (GSP), DEPENDING UPON ITS EFFECT ON U.S. TRADE. CURRENT ROMANIAN TARIFF DECREE ALSO RAISES THE SAME AND PERHAPS BROADER QUESTIONS. END SUMMARY.

2. GATT CONSIDERATION OF FINNISH-EAST EUROPEAN FREE TRADE AGREEMENTS (FTAS) IS CURRENTLY AT THE WORKING PARTY (WP) STAGE. BOTH THE FINNS AND EASTERN EUROPEAN (EE) MEMBERS OF THE WP MAINTAIN THAT THESE FTAS ARE ACCEPTABLE UNDER GATT ARTICLE XXIV. IN ADDITION, EES SEE GATT CONSIDERATION OF THESE AGREEMENTS AS A TEST CASE FOR THEIR CONTENTION THAT ALL ELEMENTS OF THE GATT, INCLUDING ARTICLE XXIV, APPLY EQUALLY TO NONMARKET ECONOMIES (NMES) AS WELL AS TO MARKET

ECONOMY MEMBERS. U.S., EC, CANADA, JAPAN, AND SWITZERLAND HAVE ALL MADE CLEAR THEIR STRONG BELIEF, EITHER IN WP SESSIONS OR PRIVATELY, THAT ARTICLE XXIV DOES NOT STRETCH FAR ENOUGH TO COVER FINNISH-ESFTAS. FURTHERMORE, THE U.S. MAINTAINS THAT TO QUALIFY UNDER ARTICLE XXIV, AN FTA MUST COVER AGRICULTURAL AS WELL AS INDUSTRIAL TRADE. NONE OF THE AGREEMENTS SIGNED SO FAR COVERS AGRICULTURE. BECAUSE WPS OPERATE ON THE BASIS OF CONSENSUS, MEETINGS RESULT ONLY IN INCONCLUSIVE FINDINGS AND REQUESTS FOR ADDITIONAL INFORMATION. GIVEN THIS SITUATION, THE ROMANIAN GOVERNMENT'S STATED DESIRE FOR DEFINITIVE GATT RULING ON FINNISH-EE FTAS IS NOT LIKELY TO BE MET.

3. SECTION 502(B)(3) OF THE TRADE ACT. THE EFFECT OF FTA BETWEEN FINLAND AND ROMANIA ON ROMANIA'S CONTINUED ELIGIBLE OFFICIAL USE

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BILITY FOR GSP WOULD TURN ON WHETHER THERE IS OR IS LIKELY TO BE "SIGNIFICANT ADVERSE EFFECT ON UNITED STATES COMMERCE" AS A RESULT OF THE REVERSE PREFERENCES THAT WOULD BE ACCORDED TO FINNISH IMPORTS BY ROMANIA. THIS IS A QUESTION OF FACT THAT COULD ONLY BE ANSWERED AFTER THE AGREEMENT IS CONCLUDED. IF SUCH ADVERSE EFFECT WERE FOUND, SECTION 504(B) WOULD REQUIRE THAT ROMANIA BE REMOVED FROM THE LIST OF COUNTRIES ELIGIBLE FOR GSP. THERE IS NO PRESIDENTIAL FLEXIBILITY WITH REGARD TO 502(B)(3) AS EXISTS WITH 502(B)(4-6). THE STATUTE APPLIES REGARDLESS OF WHETHER THE PREFERENCES WERE GRANTED IN THE CONTEXT OF AN FTA, AND REGARDLESS OF GATT APPROVAL. THE GOR WILL THUS HAVE TO WEIGH CAREFULLY THE ADVANTAGES THAT MAY ACCRUE UNDER AN FTA, WHICH THEY WOULD PRESUMABLY DEFEND IN A GATT WP AS EFFECTIVE, AGAINST THE RISK TO U.S. PREFERENTIAL TREATMENT.

4. FYI: NO PRECEDENTS EXIST FOR CHALLENGES TO GSP ELIGIBILITY BECAUSE OF CHANGED CIRCUMSTANCES UNDER SECTION 502

(B)(3). SECTION 502(B)(3) WAS THE BASIS FOR CHALLENGES TO THE INITIAL EXTENSION OF GSP TO SEVERAL MEDITERRANEAN COUNTRIES GRANTING REVERSE PREFERENCES IN EXCHANGE FOR EC TRADE CONCESSIONS. U.S. NEGOTIATED WITH AFFECTED COUNTRIES ON A PRODUCT-BY-PRODUCT BASIS TO REDUCE ADVERSE EFFECT OF PREFERENCES BELOW "SIGNIFICANT" LEVEL. SOME COUNTRIES (E.G., GREECE AND SPAIN) KEPT PREFERENCES (AND EC CONCESSIONS) RATHER THAN ACCEPT GSP. WHILE LEVEL OF FINNISH-ROMANIAN TRADE IS LOW, WE CANNOT PROVIDE ASSURANCES THAT NEW PREFERENCES WOULD NOT BE CONSIDERED TO HAVE A SIGNIFICANT EFFECT. END FYI.

5. ROMANIA'S TARIFF DECREE (NO. 365, DECEMBER 2, 1976). BY OUR READING, ARTICLE I SAYS THAT COUNTRIES WHICH APPLY NO TARIFF TO ROMANIAN PRODUCTS (EAST GERMANY, BULGARIA, HUNGARY, AND PERHAPS ALL OTHER CMEA MEMBERS) WILL PAY NO ROMANIA DUTIES, CONTRARY TO ROMANIA'S DECLARATIONS IN LIMITED OFFICIAL USE

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THE GATT WP (GATT L/4101, OCTOBER 31, 1974) AND IN THEIR BRIEF REPORT TO THE GATT ON THE NEW DECREE (L/4463, JANUARY 12, 1977). WE FEEL IT WOULD BE MISLEADING TO RAISE THE GSP ELIGIBILITY QUESTION IN CONNECTION WITH FINNISH FTA, AND NOT TO NOTE THAT THE TARIFF'S BLANKET PREFERENCE FOR SOME DEVELOPED EES COULD ALSO RAISE CONCERN ABOUT ROMANIA'S ENTITLEMENT TO GSP. IT WOULD BE HARD TO ARGUE THAT TARIFF PREFERENCES FOR MAJOR PARTNERS, SUCH AS GDR OR USSR, WOULD HAVE NO SIGNIFICANT EFFECT ON U.S. COMMERCE, ESPECIALLY IF ROMANIA SEEKS TO REPLACE ADMINISTRATIVE IMPORT ALLOCATIONS WITH A MORE EFFECTIVE TARIFF.

6. THE DECREE (ARTICLE 1 AND OTHER PROVISIONS, INCLUDING ARTICLE 6(G)) ALSO RAISES LEGAL QUESTION OF WHETHER U.S. GOODS ENTERING ROMANIA RECEIVE MFN TARIFF TREATMENT. WE CANNOT RULE OUT POSSIBILITY THAT THE VALIDITY OF TRADE AGREEMENT MAY BE QUESTIONED ON THIS BASIS IN THE CONTEXT OF WAIVER HEARINGS THIS SUMMER OR THE 1978 REVIEW OF BALANCE OF CONCESSIONS. THE EC HAS ALREADY INDICATED ITS INTEREST IN EXAMINING WHETHER THE DECREE APPLIES MFN ON A NONDISCRIMINATORY BASIS (GATT L/4469, 27 JANUARY 1977), ALTHOUGH THE WORKING PARTY ON THE ROMANIAN TARIFF MAY NOT MEET FOR SOME TIME (GENEVA 415 NOTAL).

7. ACTION REQUESTED: DRAWING ON PARAGRAPHS 3, 5 AND 6, PLEASE CONVEY OUR CONCERN TO ROMANIAN GOVERNMENT THAT THE APPLICATION OF THE DECREE, OR AN FTA WITH A DEVELOPED COUNTRY, MAY AFFECT ROMANIA'S ELIGIBILITY FOR GSP, AND COULD CONCEIVABLY CALL INTO QUESTION MFN TREATMENT FOR U.S. PRODUCTS UNDER OUR TRADE AGREEMENT. EMBASSY SHOULD

EMPHASIZE THE IMPORTANCE OF A ROMANIAN CLARIFICATION OF
THE TARIFF'S APPLICATION TO INTRA-CMEA TRADE. DEPENDING
UPON ROMANIAN RESPONSE, WASHINGTON AGENCIES MAY HAVE
FURTHER QUESTIONS.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: REPORTS, TRADE AGREEMENTS, TARIFFS
Control Number: n/a
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Sent Date: 24-Mar-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE065550
Document Source: CORE
Document Unique ID: 00
Drafter: HLCLARKE:BSAMUEL/EB/ITP/TA:RMEYER:ABA
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
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Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
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Legacy Key: link1977/newtext/t19770325/aaaaavow.tel
Line Count: 181
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
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Office: ORIGIN EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 BUCHAREST 1670, 77 GENEVA 1822
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 09-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3005662
Secure: OPEN
Status: NATIVE
Subject: FINNISH-ROMANIAN FREE TRADE AGREEMENT AND ROMANIAN TARIFF LIMITED OFFICIAL USE
TAGS: EEWT, ETRD, FI, RO, GATT
To: BUCHAREST
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/bda361b2-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009